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No. 344

In the Supreme Court of the United States

OCTOBER TERM, 1950

UNITED STATES OF AMERICA, PETITIONER

v.

WARREN V. MOORE AND MRS. WARREN V. MOORE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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The Solicitor General on behalf of the United States prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case.

OPINIONS BELOW

The opinion of the district court (R. 17) is not reported. The opinion of the United States Court of Appeals for the Fifth Circuit (R. 24) is reported in 182 F. 2d 332.

JURISDICTION

The judgment of the court below was entered on May 17, 1950 (R. 28). Petitions for rehearing were denied on July 17, 1950 (R. 40). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the judicial authority contained in Section 206(b) of the Housing and Rent Act of 1947, as amended, to issue an "order enforcing compliance" with any provision of that Act or order issued thereunder, empowers a court to order a landlord to make restitution of overceiling rentals received by him in a defense-rental area which was decontrolled after the occurrence of the violations but prior to the filing of the suit against the landlord.

STATUTES INVOLVED

The pertinent provisions of the statutes involved read as follows:

The Housing and Rent Act of 1947 as amended (61 Stat. 193; 62 Stat. 93; 63 Stat. 18; 50 U. S. C. App. (Supp. III) 1891 *et seq.*:[1]

SEC. 206(a) It shall be unlawful for any person to demand, accept, or receive any rent for the use or occupancy of any controlled

[1] The Housing and Rent Act of 1947, as amended, was further amended and was extended to June 30, 1951 by the Act of June 23, 1950. Pub. Law 574, 81st Cong., 2d sess.

housing accommodations in excess of the maximum rent prescribed under section 204, or otherwise to do or omit to do any act, in violation of this Act, or of any regulation or order or requirement under this Act, or to offer, solicit, attempt, or agree to do any of the foregoing.

SEC. 206(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any regulation or order issued thereunder, the United States may make application to any Federal, State, or Territorial court of competent jurisdiction for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

The Emergency Price Control Act of 1942, as amended (56 Stat. 23; 58 Stat. 632; 59 Stat. 306; 60 Stat. 664; 50 U. S. C. App. 901 *et seq.*

SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court

for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

STATEMENT

Respondents, Warren V. Moore and Mrs. Warren V. Moore are landlords of housing accommodations in Dallas, Texas. Between October 1, 1947, and May 31, 1949, they demanded and received rents in excess of those permitted by the applicable maximum rent regulation [2] issued under the Housing and Rent Act of 1947, as amended (hereinafter sometimes referred to as "the Act"). Respondents having refused to comply with the Act and regulation, petitioner brought this action against them pursuant to Sections 205 and 206(a) and (b) of the Act for statutory damages, injunctive relief, and for an order of restitution compelling respondents to refund to their tenant the excess of rents collected over the legal maximum (R. 1). Prior to the filing of the suit, the Housing Expediter, pursuant to action taken by the City of Dallas under Section

[2] Controlled Housing Rent Regulation, as amended, 12 F. R. 4331; 13 F. R. 1861; 14 F. R. 1571.

204(j)(3) of the Act,[3] had terminated federal rent controls in that city. 14 F. R. 3494. Basing their action on the fact that rental housing in Dallas, Texas, had been decontrolled, respondents moved to dismiss the suit (R. 24). Their motion was denied by the trial court without opinion (R. 24). The suit was thereafter tried and resulted in a judgment directing respondents to make restitution to the tenant, J. R. Qualls, in the amount of $1,093.48, and because of "some evidence * * * of wilfulness" the court directed petitioners to pay to the United States statutory damages in the amount of $50.00 (R. 18-19). Respondents appealed from this judgment[4] (R. 11).

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[3] Section 204(j)(3) at the time of the decontrol of rental housing in Dallas, Texas, read as follows:

> The Housing Expediter shall terminate the provisions of this title in any incorporated city, town or village upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after 10 days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village; *Provided, however*, That such resolution is first approved by the Governor of the State before being transmitted to the Housing Expediter: *And provided further*, That where the major portion of a defense-rental area has been decontrolled pursuant to this paragraph (3), the Housing Expediter shall decontrol any unincorporated locality in the remainder of such area. [63 Stat. 21; 50 U. S. C. App. (Supp. III) 1894(j)(3).]

[4] The petition for certiorari filed herein is directed solely to the ruling of the court below on respondent's appeal with respect to the order for restitution. Petitioner filed a cross-appeal from that part of the trial court's judgment which gave statutory damages for less than the amount of the established overcharges. The ruling of the court below on the cross-appeal, 182 F. 2d 336, is not challenged here.

The court of appeals reversed the judgment of the trial court to the extent that it directed respondents to make restitution of overcharges, and remanded the cause with directions to dismiss the suit in so far as it sought a prohibitory injunction and restitution of overceiling rentals, and for a new trial for any overcharges, together with such damages as might have accrued within one year from the date of the filing of the complaint (R. 28). The court of appeals rested its decision on the theory that restitution of overceiling rentals is merely ancillary or adjunctive to injunctive relief and cannot be ordered in the absence of power to grant an injunction. Consequently, it held that since the Housing Expediter had been "shorn of all power to enforce * * * control in the future" in Dallas, Texas, by the termination of rent control in that city, the trial court was without authority in this case to grant an injunction against future violations of the Act and hence without power to order restitution of the illegal rentals (R. 27).

REASONS FOR GRANTING THE WRIT

1. The holding of the court below that an order compelling a landlord to make restitution of overceiling rents received by him is solely an adjunct to an injunctive decree prohibiting future violations of the Housing and Rent Act, is in conflict with the reasoning of this Court in *Porter* v. *Warner*

Holding Co., 328 U. S. 395. In the *Warner* case, this Court had under consideration Section 205(a) of the Emergency Price Control Act of 1942, *supra*, pp. 3-4, the language of which was substantially the same as that contained in Section 206(b) of the Housing and Rent Act of 1927, *supra*, p. 3, This Court there held that an order issued under Section 205(a) of the Price Control Act for the recovery of illegal rents might be considered as a proper "other order" under that section "on either of two theories," (1) it might be "considered as an equitable adjunct to an injunction decree" (p. 399), or (2) it might be "considered as an order appropriate and necessary to enforce compliance with the Act" (p. 400). Thus, under the second of these theories a restitution order can issue regardless of whether a prohibitory injunction can be issued in the particular case. This Court's reference to the second theory would have been meaningless if restitution had been deemed permissible only when ancillary to injunctive relief.

In the *Warner* case this Court pointed out the effect of a restitution order, as follows (p. 400):

> And it is not unreasonable for a court to conclude that such a restitution order is appropriate and necessary to enforce compliance with the Act and to give effect to its purposes. Future compliance may be more definitely assured if one is compelled to restore one's illegal

gains; and the statutory policy of preventing inflation is plainly advanced if prices or rents which have been collected in the past are reduced to their legal maximums.

In enacting the Housing and Rent Act of 1947, Congress used substantially the same language in Section 206(b) thereof, *supra*, p. 3, as it had used in Section 205(a) of the Price Control Act, *supra*, pp. 3-4. In the circumstances, Section 206(b) of the Rent Act should receive the same construction as that placed by this Court on Section 205(a) of the Price Control Act.

2. The decision of the court below is in conflict with the decisions of four other courts of appeal construing Section 205(a) of the Emergency Price Control Act of 1942 in light of this Court's holding in the *Warner* case. *Ebeling* v. *Woods*, 175 F. 2d 242 (C. A. 8) [5]; *Woods* v. *Wolfe*, 182 F. 2d 516 (C. A. 3) [6] *Woods* v. *Wayne*, 177 F. 2d 559 (C. A.

[5] "The opinion in *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 399-403, 66 S. Ct. 1086, 1089-1091, 90 L. Ed. 1332, however, is explicit, we think, that an equitable order for restitution of overcharges may be made under the Price Control Act, either as an adjunct to a prohibitory injunction or independently and without regard to whether such an injunction is being sought or has been denied." (*Ebeling* v. *Woods*, 175 F. 2d 242, 244.)

[6] "Congress made available to the Expediter through Section 205(a) an armory of the weapons of equity. One of these weapons is the injunctive process; another is restitution. Neither one is dependent upon the other. Both may be availed of, or one or the other successfully employed." (*Woods* v. *Wolfe*, 182 F. 2d 516, 518-519.)

4); *Woods* v. *Richman*, 174 F. 2d 614 (C. A. 9).[7] The decision of the court below is likewise in conflict with its own prior decision in *Creedon* v. *Randolph*, 165 F. 2d 918.[8] Each of the cases hold, on the authority of this Court's decision in the *Warner* case, that an order of restitution is authorized under Section 205(a) of the Emergency Price Control Act of 1942 without regard to whether a prohibitory injunction is sought or denied. See *Bowles* v. *Skaggs*, 151 F. 2d 817 (C.A. 6), which reached the same conclusion prior to the *Warner* decision. And in all of these cases, except the *Skaggs* and *Randolph* cases, *supra*, restitution was awarded after the Emergency Price Control Act of 1942 had terminated so that injunctive relief was no longer possible.

Authority to enforce rights and liabilities after the termination of the Price Control Act was vested in the courts by the saving provision in Section 1(b) of that Act (50 U. S. C. App. 901(b)). See

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[7] "The remedy afforded by § 205(a) is in addition to others set up in the Act; and an order of restitution may be granted with or without a prohibiting injunction." (*Woods* v. *Richman*, 174 F. 2d 614, 616.)

[8] See also *Jackson* v. *Woods*, 172 F. 2d 338, decided by the court below on the same day it decided the case at bar, wherein restitution was granted by the trial court and upheld on appeal. The housing accommodations in the *Jackson* case were likewise situated in Dallas, Texas, just as were the accommodations in the instant case. The complaint in the *Jackson* case was filed on February 11, 1949, prior to the time decontrol took effect in Dallas, which was on June 23, 1949. In the case at bar, the complaint was filed on June 29, 1949, a few days after the decontrol had gone into effect.

Fleming v. *Mohawk Co.*, 331 U. S. 111, 119; *Woods* v. *Hills*, 334 U. S. 210. A similar saving provision is contained in Section 204(f) of the Housing and Rent Act of 1947 (50 U. S. C. App. (Supp. III) 1894 (f)), which maintains in full force and effect after termination of the Act, all of its provisions and all orders issued thereunder for the purpose of sustaining suits with respect to rights and liabilities accruing prior to the termination. This provision is plainly broad enough to cover liabilities which arose prior to decontrol even where suit is not brought until after the decontrol takes place.

3. The decision of the court below, unless reversed, will govern the outcome of a large number of restitution cases, now pending in district courts within the Fifth Circuit, brought pursuant to Section 206(b) of the Housing and Rent Act in connection with violations which occurred in areas that are now decontrolled. Furthermore action to accomplish the decontrol of rental housing accommodations has been taken or is being contemplated by many cities of consequence. In addition, numerous other areas have been decontrolled by virtue of the authority contained in Section 204(c) and (k) of the Act (50 U.S.C. App. (Supp. III) 1894 (c) and (e)). Presumably the ruling of the court below would control in the Fifth Circuit regardless of the manner in which the decontrol of a defense-rental

area has been brought about.[9] In the circumstances, there is an urgent public need to have the decision of the court below brought into harmony with the holding of this Court in the *Warner* case, and to have resolved the conflict between that decision and the decisions of the other four courts of appeal cited above.

CONCLUSION

For the reasons stated, the petition for certiorari should be granted.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

ED DUPREE,
General Counsel,
Office of the Housing Expediter.

OCTOBER, 1950.

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[9] Decontrol actions for the nation effective to and including September 8, 1950, undertaken by the various methods provided by the Act are set forth below:

Cumulative April 1, 1949, to September 8, 1950	Actions	Estimated Units	1940 Population
Expediter Initiative	554	1,351,901	15,822,865
Local Option	330	1,317,746	6,650,411
Local Option (County)	1	3,188	47,565
State Option	10	3,489,368	19,876,818
Board Recommendation	6	84,419	559,842
Total	901	6,246,622	42,957,501

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